

APR 25 2007

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Application No.: 10/824,121

Inventor(s): Gregory Ashton, *et al.*

Filed: April 14, 2004

Docket No.: 9522

Confirmation No.: 6455

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1) Appeal Brief (17 pages)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/824,121
Inventor(s) : Gregory Ashton, et al.
Filed : April 14, 2004
Art Unit : 3761
Examiner : Melanie Jo Hand
Docket No. : 9522
Confirmation No. : 6455
Customer No. : 27752
Title : Dual Cuff for a Unitary Disposable Absorbent Article
Being Spaced Away From Backsheet

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

With regard to the above-identified application, a Final Office Action was mailed on November 24, 2006 and a timely Notice of Appeal was filed on February, 26 2007. This Appeal Brief is filed pursuant to that Notice.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

The Applicant notes that U.S. Patent Application serial number 10/824,122 entitled "Dual cuff for a unitary disposable absorbent article made of a continuous cuff material," which may be related to the present application, is currently pending on appeal

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to this Honorable Board of Patent Appeals and Interferences. There are no other known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

The application includes claims 1-17. Claims 1-17 stand rejected. Claims 1-17 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix.

STATUS OF AMENDMENTS

The Applicant has not filed an amendment subsequent to the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 claims a unitary disposable absorbent article (#20 in Figs. 1-3, and page 5, lines 4-5). The article includes an absorbent core (#28 in Figs. 1-3, and page 5, lines 3-4, line 28 – page 6, line 24) having a garment surface (page 2, line 2) and a body surface (page 2, line 3). The article also includes a liquid permeable topsheet (#24 in Figs. 1-3, and page 5, lines 2-27) positioned adjacent the body surface of the absorbent core. The article further includes a liquid impermeable backsheet (#26 in Figs. 2-3, and page 5, lines 2-17, page 6, line 24 – page 7, line 21) positioned adjacent the garment surface of the absorbent core.

The unitary disposable absorbent article of independent claim 1 includes an elastically contractible dual cuff (#20 in Figs. 2-3, and page 9, line 11 – page 10, line 3, page 10, line 31 – page 11, line 16). The dual cuff has a proximate end (#35 in Figs. 2-3, and page 9, lines 11-12) and a distal end (#39 in Figs. 2-3, and page 11, lines 11-12). The dual cuff is joined to the article by an intermediate bond (#70 in Figs. 2-3, and page 10, lines 31-35). The dual cuff has a first cuff (#40 in Figs. 2-3, and page 9, lines 6-8, 14-15,

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page 11, lines 19-25) and a second cuff (#50 in Figs. 2-3, and page 9, lines 6-8, 15-16, page 11, line 5-16).

The first cuff is disposed between the proximate end and the intermediate bond. (Page 2, lines 7-8.) The second cuff is disposed between the intermediate bond and the distal end. (Page 2, lines 8-9.) The dual cuff is constructed of a continuous cuff material (#33 in Figs. 2-3, and page 9, lines 13-14, and 22 – page 10, line 1) and enclosed by a cuff end bond (#60 in Figs. 2-3, and page 9, lines 18-21). The cuff end bond is disposed at the distal end and connects a first edge of the continuous cuff material to a second edge of the continuous cuff material. (Page 9, line 22 – page 10, line 1.) The second cuff is spaced away from the backsheet. (Page 3, lines 21-22, and page 11, lines 7-11.)

Independent claim 14 claims a unitary disposable absorbent article (#20 in Figs. 1-3, and page 5, lines 4-5). The article includes an absorbent core (#28 in Figs. 1-3, and page 5, lines 3-4, line 28 – page 6, line 24) having a garment surface (page 2, line 2) and a body surface (page 2, line 3). The article also includes a liquid permeable topsheet (#24 in Figs. 1-3, and page 5, lines 2-27) positioned adjacent the body surface of the absorbent core. The article further includes a liquid impermeable backsheet (#26 in Figs. 2-3, and page 5, lines 2-17, page 6, line 24 – page 7, line 21) positioned adjacent the garment surface of the absorbent core.

The unitary disposable absorbent article of independent claim 1 includes an elastically contractible dual cuff (#20 in Figs. 2-3, and page 9, line 11 – page 10, line 3, page 10, line 31 – page 11, line 16). The dual cuff has a proximate end (#35 in Figs. 2-3, and page 9, lines 11-12) and a distal end (#39 in Figs. 2-3, and page 11, lines 11-12). The dual cuff is joined to the article by an intermediate bond (#70 in Figs. 2-3, and page 10,

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lines 31-35). The dual cuff has a first cuff (#40 in Figs. 2-3, and page 9, lines 6-8, 14-15, page 11, lines 19-25) and a second cuff (#50 in Figs. 2-3, and page 9, lines 6-8, 15-16, page 11, line 5-16).

The first cuff is disposed between the proximate end and the intermediate bond. (Page 2, lines 7-8.) The second cuff is disposed between the intermediate bond and the distal end. (Page 2, lines 8-9.) The dual cuff is constructed of a continuous cuff material (#33 in Figs. 2-3, and page 9, lines 13-14, and 22 – page 10, line 1) and enclosed by a cuff end bond (#60 in Figs. 2-3, and page 9, lines 18-21). The cuff end bond connects a first edge of the continuous cuff material to a second edge of the continuous cuff material. (Page 9, line 22 – page 10, line 1.) At least one of the first and second cuffs includes a pair of operatively associated elastic members (#42, #44, #52, #54 in Figs. 1-3, and page 9, lines 14-16, 20-21, page 10, lines 4-30) extending substantially along the length thereof. The second cuff is spaced away from the backsheet. (Page 3, lines 21-22, and page 11, lines 7-11.) The dual cuff is bonded to the article by a single bond. (Page 10, lines 1-3.)

The Applicant first argues independent claim 1, together with its dependent claims 2-13. The Applicant second argues independent claim 14, together with its dependent claims 15-17.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

I. Whether claims 1-13 are unpatentable under 35 U.S.C. § 102(b) over Kielpikowski, et al. (U.S. 5,669,896).

II. Whether claims 14-17 are unpatentable under 35 U.S.C. § 102(b) over Kielpikowski, et al. (U.S. 5,669,896).

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ARGUMENTS

Provisional double-patenting rejection

The Applicant acknowledges that the Final Office Action included a double-patenting rejection over pending U.S. Patent Application serial number 10/824,122. Based on the Office Action of December 16, 2005, the Applicant understands this rejection to be a nonstatutory, provisional double-patenting rejection. In light of this, the Applicant elects to address this provisional double-patenting rejection if and when it is converted into a double-patenting rejection. Therefore, the Applicant does not address this provisional double-patenting rejection in this Appeal Brief.

Rejections of claims 1-13 under 35 U.S.C. § 102(b) over Kielpikowski

The rejections of claims 1-13 under 35 U.S.C. § 102(b) over Kielpikowski are improper because the Final Office Action failed to establish anticipation since the Kielpikowski reference does not describe each and every claim limitation recited in the Applicant's independent claim 1.

Independent claim 1 recites in part "unitary disposable absorbent article" comprising "an elastically contractible dual cuff having a proximate end and a distal end" the "dual cuff being constructed of a continuous cuff material and enclosed by a cuff end bond, said cuff end bond being disposed at said distal end and connecting a first edge of the continuous cuff material to a second edge of the continuous cuff material." The Applicant points out that Figures 2 and 3 of the application illustrate embodiments with a cuff end bond 60. The embodiments of Figures 2 and 3 also include a continuous cuff material 33 "that is continuous along a path beginning from the cuff end bond, along said

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cuff material, and ending at the same cuff end bond" (application, page 9, lines 22-23).

For convenience, the Applicant has included Figure 2 of the application below.

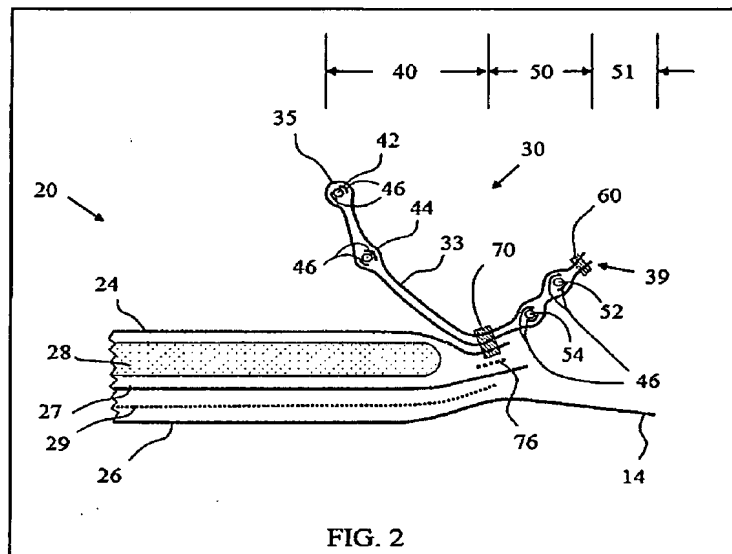


FIG. 2

In asserting its 102(b) rejections, the Final Office Action of November 24, 2006 cited inner containment flaps 34 of the Kielpikowski reference against the above-cited portions of the Applicant's independent claim 1, by stating:

With respect to applicant's arguments that Kielpikowski does not teach a cuff end bond connecting a first edge of a continuous cuff material to a second edge of a continuous cuff material, Examiner disagrees. Considering only inner flaps 34, flaps 34 each have a proximal and distal end, said flaps are comprised of a continuous cuff material and have a cuff end bond as described in the previous Office action. Since the cuff material is continuous, the cuff bond at the distal end does in fact connect a first edge of the continuous cuff material to a second edge of the same continuous cuff material, as the cuff bond are merely formed by slipping elastic strands through folded ends of said cuff material and bonding the material halves adjacent the fold to each other below the elastic elements.

(Page 2, paragraph 2.) The Final Office Action of November 24, 2006 also stated:

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As can be seen in Fig. 7, elastic members 32 extending along the length of flaps 26 are held in place by bonds wherein the material of flaps 26 is wrapped around said elastic members and adhered to itself, thus forming a cuff end bond at the distal end of the dual cuff assembly 24.

(Page 2, lines 9-12.) The previous Office Action was the Final Office Action of June 1, 2006, which stated:

With respect to applicant's arguments that Kielpikowski does not teach or suggest a cuff bond disposed at the distal end of dual cuff assembly 24, Examiner disagrees. Kielpikowski teaches a bond created when the material of distal flaps 26 is secured around the elastic members 32 to secure them in place and subsequently bonded above and below said elastic members (Fig. 7), thus forming a cuff bond at a distal end of said dual cuff assembly.

(Page 2, paragraph 1.) From the Applicant's viewpoint, it appears that the Final Office Actions take the position that the bond in the wrapped flap material of the Kielpikowski reference is a cuff end bond as described in the Applicant's claim 1.

The Kielpikowski reference is entitled "Absorbent Article Comprising Dual Containment Flaps." In the Kielpikowski reference, "FIG. 7 illustrates a cross-sectional perspective view of the absorbent garment illustrated in FIG. 1 in a relaxed condition."

(Kielpikowski, col. 2, lines 16-17.) With regard to bonding the flap material, the Kielpikowski reference states:

In one embodiment, the first and second elastic members are adhesively attached to the first sheet of containment flap material in a pretensioned condition. Those skilled in the art will recognize that a wide variety of adhesive materials are suitable for use in the present invention. Specifically, the adhesive may comprise a hot melt adhesive, a pressure-sensitive adhesive, latex adhesive, and the like. In one specific embodiment, the adhesive comprises a hot melt adhesive commercially available from Findley Adhesives, Inc. under the trade designation H2096. The adhesive may be applied in a wide variety of patterns known to those skilled in the art. Specifically, the adhesive may be applied in swirls, strands, strips, bars, spots, and the like, and may be applied via slot coating, spraying, printing, and the like. Those skilled in the art will

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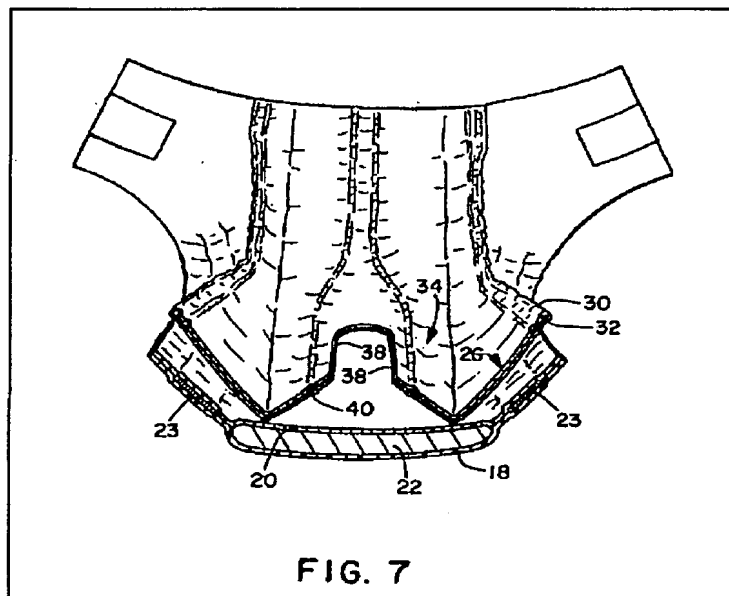
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appreciate other methods of attaching the first and second elastic members to the first sheet of containment flap material. Other suitable methods include thermal bonding, ultrasonic bonding, infrared bonding, radio frequency bonding, and the like. The same methods and materials may be employed to join the second sheet of containment flap material to the first sheet of containment flap material.

For convenience, the Applicant has included Figure 7 of the Kielpikowski reference below.



“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Independent claim 1 recites “a cuff end bond, said cuff end bond being disposed at said distal end and connecting a first edge of the continuous cuff material to a second edge of the continuous cuff material.” From the Applicant’s review, the Kielpikowski reference appears to illustrate elastic members which can be adhesively attached in

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wrapped flap material, not a cuff end bond connecting a first edge to a second edge as described in the Applicant's independent claim 1. Thus, the Kielpikowski reference does not describe each and every element as set forth in the Applicant's independent claim 1.

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The Applicant's specification states that a continuous cuff material 33 "is continuous along a path beginning from the cuff end bond, along said cuff material, and ending at the same cuff end bond" (application, page 9, lines 22-23). Thus, according to the Applicant's specification, at the cuff end bond the continuous cuff material both begins and ends. From the Applicant's review, in the Kielpikowski reference, at the wrap around the elastic member, the flap material neither begins nor ends. The Applicant respectfully asserts that the Final Office Action gave an unreasonably broad interpretation, inconsistent with the Applicant's specification, when it cited a bond in wrapped flap material of the Kielpikowski reference against the cuff end bond of the Applicant's claim 1. Thus, the Kielpikowski reference does not describe each and every element as set forth in the Applicant's independent claim 1.

For these reasons, the Applicant respectfully submits that the Final Office Action has not established anticipation of the invention of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 1 as well as for dependent claims 2-13, which depend therefrom. The Applicant respectfully requests allowance of claims 1-13.

Rejections of claims 14-17 under 35 U.S.C. § 102(b) over Kielpikowski

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The rejections of claims 14-17 under 35 U.S.C. § 102(b) over Kielpikowski are improper because the Final Office Action failed to establish anticipation since the Kielpikowski reference does not describe each and every claim limitation recited in the Applicant's independent claim 14.

Independent claim 14 recites in part "unitary disposable absorbent article" comprising a "dual cuff being constructed of a continuous cuff material and enclosed by a cuff end bond connecting a first edge of the continuous cuff material to a second edge of the continuous cuff material." From the Applicant's viewpoint, it appears that the Final Office Actions take the position that the bond in the wrapped flap material of the Kielpikowski reference is a cuff end bond as described in the Applicant's claim 14.

From the Applicant's review, the Kielpikowski reference appears to illustrate elastic members which can be adhesively attached in wrapped flap material, not a cuff end bond connecting a first edge to a second edge as described in the Applicant's independent claim 14. Also, in the Kielpikowski reference, at the wrap around the elastic member, the flap material neither begins nor ends, which is inconsistent with the Applicant's specification, in which, at the cuff end bond the continuous cuff material both begins and ends. Thus, the Kielpikowski reference does not describe each and every element as set forth in the Applicant's independent claim 14.

For these reasons, the Applicant respectfully submits that the Final Office Action has not established anticipation of the invention of the Applicant's independent claim 14. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claim 14 as well as for dependent claims 15-17, which depend therefrom. The Applicant respectfully requests allowance of claims 14-17.

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SUMMARY

In view of all of the above, the Applicant respectfully submits that the appealed claims have been improperly rejected. The Applicant respectfully requests that the Honorable Board of Patent Appeals and Interferences reverse the rejections of the appealed claims and remand the application to the Examiner with instructions that these claims be allowed over the cited art.

Respectfully submitted,



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CLAIMS APPENDIX

1. (Previously Presented) A unitary disposable absorbent article comprising:

an absorbent core having a garment surface and a body surface;

a liquid permeable topsheet positioned adjacent said body surface of said absorbent core;

a liquid impermeable backsheet positioned adjacent said garment surface of said absorbent core; and

an elastically contractible dual cuff having a proximate end and a distal end, said dual cuff being joined to said article by an intermediate bond, said dual cuff having a first cuff and a second cuff, said first cuff being disposed between said proximate end and said intermediate bond, said second cuff being disposed between said intermediate bond and said distal end, said dual cuff being constructed of a continuous cuff material and enclosed by a cuff end bond, said cuff end bond being disposed at said distal end and connecting a first edge of the continuous cuff material to a second edge of the continuous cuff material;

wherein said second cuff is spaced away from said backsheet.

2. (Original) The absorbent article of claim 1 wherein said backsheet extends outboard of said distal end.

3. (Original) The absorbent article of claim 1 wherein said first cuff envelopes at least one elastic.

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4. (Original) The absorbent article of claim 3 wherein said elastic is operatively associated with said first cuff by securing it with an elastic attachment element.
5. (Original) The absorbent article of claim 1 wherein said second cuff envelopes at least one elastic.
6. (Original) The absorbent article of claim 5 wherein said elastic is operatively associated with said second cuff by securing it with an elastic attachment element.
7. (Original) The absorbent article of claim 1 wherein said article is a disposable diaper.
8. (Original) The absorbent article of claim 7 wherein said disposable diaper is a prefastened diaper.
9. (Original) The absorbent article of claim 1 wherein said continuous cuff material is constructed of a lesser-water-permeable material with a more-water-permeable material placed inside said lesser-water-permeable material.
10. (Original) The absorbent article of claim 9 wherein said lesser-water-permeable material is a spunbound material.
11. (Original) The absorbent article of claim 9 wherein said more-water-permeable material is a meltblown material.

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12. (Original) The absorbent article of claim 1 wherein said continuous cuff material is constructed of a spunbound-meltblown laminate.

13. (Previously Presented) The absorbent article of claim 1 wherein said continuous cuff material is constructed of a series of materials.

14. (Previously Presented) A unitary disposable absorbent article comprising:

an absorbent core having a garment surface and a body surface;

a liquid permeable topsheet positioned adjacent said body surface of said absorbent core;

a liquid impermeable backsheet positioned adjacent said garment surface of said absorbent core; and

an elastically contractible dual cuff having a proximate end and a distal end, said dual cuff being joined to said article by an intermediate bond, said dual cuff having a first cuff and a second cuff, said first cuff being disposed between said proximate end and said intermediate bond, said second cuff being disposed between said intermediate bond and said distal end, said dual cuff being constructed of a continuous cuff material and enclosed by a cuff end bond connecting a first edge of the continuous cuff material to a second edge of the continuous cuff material, wherein at least one of said first and second cuffs includes a pair of operatively associated elastic members extending substantially along the length thereof;

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wherein said second cuff is spaced away from said backsheet, wherein said dual cuff is bonded to said article by a single bond.

15. (Original) The absorbent article of claim 14 wherein said single bond is said intermediate bond.

16. (Previously Presented) The absorbent article of claim 1, wherein the first and second cuffs are barrier cuffs.

17. (Previously Presented) The absorbent article of claim 14, wherein the first and second cuffs each include a pair of operatively associated elastic members.

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EVIDENCE APPENDIX

(none)

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RELATED PROCEEDINGS APPENDIX

(none)